

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.51 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Accused No.1 in Sessions Case No.176 of 2011 on the file of the Additional Sessions Judge-cum-Judge, Family Court, Guntur, is the appellant herein. He was tried for the offences punishable under Sections 302, 201 and 498-A IPC, where as accused No.2 was tried for the offence punishable under section 498-A IPC. Vide judgment, dated 22.12.2011, the learned Sessions Judge, convicted accused No.1 for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month. He was further convicted for the offences punishable under Sections 201 and 498-A IPC and sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- under each count, in default to suffer simple imprisonment for a period of one month. Accused No.2 was acquitted of the charge with which she was tried.

2) The sum and substance of the charges is that on 15.08.2009 accused No.1 intentionally caused the death of his wife Naidu Padma (hereinafter referred to as "the deceased") by pouring kerosene and setting her on fire, and prior to 15.08.2009, both the accused are said to have harassed the deceased both physically and

mentally. After the incident, in order to screen the evidence, accused No.1 came out of the room and bolted the doors from outside and took an axe and broke open doors to create a scene as if the deceased committed suicide.

3) The facts as culled out from the evidence of the prosecution witnesses are as under:

Accused No.2 is the mother of accused No.1 and cousin sister of PW.1, who is none other than the father-in-law of accused No.1. The marriage between accused No.1 and the deceased took place about four years prior to the incident at Kolanukonda village. Out of wedlock they were blessed with a daughter and son. It is said that initially accused No.1 looked after the deceased affectionately, but later on started suspecting the fidelity of the deceased. The deceased used to complain about the harassment caused by accused No.1 to PW.1 and others. It is further stated that accused No.1 was harassing the deceased at the instance of accused No.2. The evidence on record would show that when the deceased was with PWs.1 and 2, accused No.1 sent mediators requesting to send the deceased for marital life. On persuasion of the elders, namely PW.4 and 6 and one Subba Rao (not examined), PW.1 sent his daughter to accused No.1, however there was no much difference in the attitude of accused No.1. On 14.08.2009 PW.2 sent a saree, to the deceased on the eve of her birthday, which was on 15<sup>th</sup> August through her son. On the said date, they came to know about the death of the deceased. At that time PW.1

was in fields. On coming to know about the same, PWs.1, 2, 3 and others went to the house of accused No.1 and found the deceased lying dead with burn injuries. Suspecting accused Nos.1 and 2 as the persons, who set fire to the deceased, a report came to be lodged with PW.13-the Sub-Inspector of Police. Basing on the said report (Ex.P1), PW.13 registered a case in Crime No.248 of 2009 under Section 174 Cr.P.C., which lead to issuance of Ex.P14-the first information report. On the same day, PW.13 took up investigation, visited the house of the accused and found the deceased with 100%burn injuries. As his enquiries revealed that the deceased died within seven years of the marriage, he sent a requisition to the Tahsildar, Tadepalli for holding inquest. Accordingly, PW.9-the Tahsildar conducted inquest over the dead body of the deceased. During inquest, he examined PWs.1 to 6, 10 and others and recorded their statements. PW.13 also observed the scene of offence and prepared an observation report as well as rough sketch. Ex.P15 is the rough sketch and Ex.P6 is the scene observation report. During the observation of the scene of offence PW.13 seized MOs.1 to 8. Thereafter he sent the dead body for postmortem examination.

PW.11-the Civil Assistant Surgeon, Government Hospital, Mangalagiri, conducted autopsy over the dead body of the deceased and issued Ex.P12-the postmortem certificate. According to him, the cause of death was “due to asphyxia with air way obstruction at neck, may be throttling and postmortem burns present.”

On the same day, PW.7-the village servant produced accused No.1 along with extra judicial confession statement recorded by him along with a covering letter, which are marked as Exs.P4 and P5. After verifying the extra judicial confession statement, PW.13 altered the section of law to 498-A, 302 and 201 IPC. Further investigation in this case was taken up by PW.14-the Inspector of police. He arrested the accused on the same day and recorded the confessional statement of accused No.1. After completing the investigation and obtaining final report, PW.15 filed a charge sheet before the Court of Additional Junior Civil Judge, Mangalagiri, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.176 of 2011.

4) On appearance, charges under Sections 302, 498-A and 201 IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P19 and M.Os.1 to 8. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. On behalf of the accused, neither oral nor documentary evidence was adduced.

6) Basing on the material available on record, the learned Sessions Judge, convicted accused No.1 for the offence punishable

under Sections 302, 498-A and 201 IPC and sentenced him as stated supra, while acquitting accused No.2. Assailing the said conviction and sentence the present Criminal Appeal came to be filed.

7) The main ground urged by the learned counsel for the appellant is that there is no other material to show that the accused were responsible for the death of the deceased. Since the extra judicial confession made before PW.7 was disbelieved by the trial Court and in the absence of any evidence to show that the accused was present in the house at the time of the incident, the trial Court erred in convicting accused No.1. He would further contend that there is absolutely no evidence to show as to whether the door was locked from inside or outside and in the absence of the same, the possibility of deceased committing suicide cannot also be ruled out.

8) On the other hand, the learned Public Prosecutor would submit that the evidence of PW.5 would show that the accused beat the deceased because of which she fell down and sustained burn injuries. He also submits that though there are no eye witnesses to the incident but the extra judicial confession made before PW.7 can be acted upon to convict accused No.1 with the offences.

9) In order to appreciate the rival contentions, it would be useful to refer to the evidence and findings arrived at by the trial Court.

10) Before proceeding further it is to be noted that there are no eye witnesses to the incident and the entire case is based on circumstantial evidence. The only circumstance being that the body was found in the house of the accused. Admittedly no charge for an offence punishable under Section 302 IPC was framed against accused No.2 though as per the averments in the charge sheet show that she was present in the house along with accused No.1. The charge framed against her was for an offence punishable under Section 498-A IPC which ended in an acquittal.

11) The second circumstance which requires to be referred to is that the prosecution is trying to connect the accused with the crime basing on the extra judicial confession-Ex.P4 made before PW.7. In Para Nos.53 to 56 of the judgment, the learned Sessions Judge, after referring to the judgment of this Court in *Allaparthi Naresh @Pasi v. State of A.P. rep. by its Public Prosecutor*<sup>1</sup> and also having regard to the contents of the same, rejected the extra judicial confession said to have been made by accused No.1 before PW.7. However, since the death took place in the house the trial Court convicted accused No.1.

12) Once the extra judicial confession goes, the other evidence remains that is required to be considered is that of PWs.1 to 5.

13) It is to be noted here that PWs.1 to 5 are the main witnesses, who were examined to speak about the harassment and also about the manner in which the incident in question took place.

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<sup>1</sup> (2011) 3 ALT (Gr.) 83 (DB)

Therefore, their evidence requires to be considered to show as to whether the same would in any way establish the guilt of accused No.1 in the crime. There is no dispute with regard to marriage between accused No.1 and the deceased, which took place about four years prior to the date of incident and out of wedlock they were blessed with two children.

14) PW.1 in his evidence, while referring to the harassment to the deceased in the hands of the accused by suspecting her fidelity, also speaks about a mediation which took place in the presence of PWs.4 and 6 and others. Insofar as the incident in proper is concerned, he deposed that on 15.08.2009 at about 5.00 p.m., while he was in the fields, he was informed about the death of the deceased. Then himself along with others went to the house of accused No.1 and found the deceased with burn injuries. When enquired from the neighbours, it was informed to him that she was set on fire. Insofar as the contents of Ex.P1 are concerned, he states that it was prepared by somebody at the police station in the presence of A.S.I. of Police.

15) PW.2, who is the mother of the deceased, in her evidence deposed about the marriage; birth of two children and also the harassment by accused No.1 at the instance of accused No.2. Her evidence is silent as to the nature of harassment meted out by the deceased. She further deposed that on 14.08.2009, she sent her son to the deceased with a saree for her birthday and on 15.08.2016 she came to know about the death of her daughter.

When all of them went to the house of accused No.1, they found the deceased lying on the ground with burn injuries. Suspecting accused Nos.1 and 2 responsible for the death, a report was lodged. She further admits that the jewellery which was given to the deceased was found on her body. She further admits that the children of the deceased are living with accused No.2 and she is looking after their welfare. To a suggestion that the deceased committed suicide as they have not given property to her was denied. She also denied that the deceased committed suicide because of harassment of her son.

16) PW.3, who is the brother of the deceased, in his evidence deposed that on 14.08.2009 at about 8.00 p.m., he went along with his friends to the house of his sister and gave a saree for her birthday. As nobody was in the house, he talked with her and left. After some time accused No.1 called him on telephone and scolded him for getting his friends to his house. On 15.08.2009 at about 5.00 p.m., while they were in fields, were informed about the death of the deceased. All of them went to the house of accused No.1 and came to know that accused No.1 poured petrol and killed the deceased. In his evidence he refers to a quarrel earlier between the deceased and accused No.1, to which a panchayat was convened.

17) PW.4, who is one of the mediators, deposed that for one year after the marriage, accused No.1 and the deceased lived happily and thereafter differences arose between both of them. According

to him, himself, one Ammisetty Subba Rao and PW.7 chastised accused No.1 to look after the deceased properly. According to him, accused No.1 beat the deceased, as a result of which she fell on the gas stove and sustained burn injuries. In the cross-examination he admits that he does not know the person with whom the report was got drafted but the same was scribed to his dictation. To a suggestion that there are no visiting terms between deceased and PW.2 on account of not settling the property, was denied. He further denies a suggestion that the deceased developed suicidal inciting as her parents refused to give property.

18) PW.5 did not support the case of prosecution and he was treated hostile by the prosecution.

19) PW.6, who acted as a mediator deposed about the mediation which took place six months prior wherein they advised accused No.1 to live happily and amicably with the deceased. However, in the cross-examination he admits that he did not state before the police about the settlement made by him and others about six months prior to the incident.

20) From the evidence of all these witnesses it is clear that the incident in question occurred some time in the afternoon and the information about the incident reached to PWs.1 and 2 at 5.00 p.m. The charge also shows that the incident in question took place in the afternoon. It is also to be noted here that there is no evidence on record to show the presence of accused Nos.1 and 2 in the house at the time of the incident. In the absence of any

evidence as to the presence of accused Nos.1 and 2 in the house at the time of the incident, we feel that it would be improper to invoke Section 106 of the Indian Evidence Act. Section 106 of the Indian Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, has offered an explanation which might drive the Court to draw a different inference.

21) In the instant case PW.1 in his evidence deposes about the accused harassing the deceased, suspecting her fidelity, but the evidence of PW.2 is silent on this aspect. Her evidence does not in anywhere indicate the nature of harassment and the purpose for which the deceased was harassed except stating that the deceased was harassed by the accused. Her evidence is silent as to why the deceased was harassed. Even the evidence of PW.3, who is brother of the deceased, is silent with regard to the alleged acts of cruelty and harassment meted out by the deceased. PW.6, who acted as mediator only speaks about the harassment, but his evidence is also silent as to the nature of harassment.

22) In order to constitute an offence of cruelty, the harassment must be of such a nature, which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health. The evidence of PWs. 1 to 3 and 6, in our view do not fulfil the ingredients of Section 498-A IPC.

23) Coming to the presumption of finding, accused No.1 guilty by invoking Section 106 of the Indian Evidence Act. As held by us earlier, there is no evidence on record to show that the accused Nos.1 and 2 were present in the house on the afternoon of 15.08.2009. Further, The prosecution tried to project the case as if it was a case of throttling but in the cross-examination the doctor admits that he did not find any external injuries or abnormality on the neck. The doctor was also not sure as to whether the cause of death was due to throttling. Even assuming to be a case of homicide, but there is no positive evidence to show that it was accused No.1 alone, who was responsible for the death. In the absence of any evidence to show that he was present in the house at the time of incident, and when accused No.2, who was also said to have been present along with accused No.1 in that house along with the deceased was not charged under Section 302 IPC and was acquitted even for the charge under Section 498-A IPC, we feel that it is a case where benefit of doubt can be extended to accused No.1.

24) In view of the above findings, we feel that the circumstances relied upon by the prosecution may not be sufficient to connect the accused No.1 with the crime.

25) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against accused No.1 in S.C.No.176 of 2011

on the file of the Additional Sessions Judge-cum-Judge, Family Court, Guntur, are set aside. Consequently, accused No.1 shall be set at liberty forthwith, if not required in any other case.

26) Consequently, miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

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JUSTICE T. AMARNATH GOUD

11.04.2018  
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